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Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT**

**EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

In re: ) **Case No. 09-29162-D-11**

SK FOODS, L.P., a California limited ) **Chapter 11**  
partnership, ) **DC No. SH-29**

Debtor.

In re : ) **Case No. 09-29161-D-11**

RHM INDUSTRIAL/SPECIALTY FOODS, ) **Chapter 11**  
INC., a California Corporation, d/b/a Colusa ) **DC No. SH-29**  
County Canning Co., )

Debtor.

**REPLY IN SUPPORT OF FIRST  
INTERIM FEE APPLICATION BY  
SCHNADER HARRISON SEGAL &  
LEWIS FOR COMPENSATION AND  
EXPENSE REIMBURSEMENT;  
RESPONSES TO OBJECTIONS TO  
FEES**

**Date: December 2, 2009**  
**Time: 10:00 a.m.**  
**Place: Courtroom 34**  
**501-I Street, Sacramento, CA**  
**Judge: Hon. Robert S. Bardwil**

## I. INTRODUCTION

Schnader Harrison Segal & Lewis LLP (“SHSL”), attorneys for Bradley D. Sharp, Chapter 11 trustee (“Trustee”) in bankruptcy for the estates of SK Foods, LP and RHM/Industrial Specialty Foods. (“Debtors”), hereby replies to the Objection to First Interim Fee Application by SHSL for Compensation and Expense Reimbursement (“Objection”) filed by Blackstone Ranch Corporation, Monterey Peninsula Farms, LLC, Salyer Management Company, LLC, SS Farms, LLC, SSC Farming, LLC, SSC Farming I, LLC, SSC Farming II, LLC, and SSC Farms III, LLC (collectively, the “Farming Entities”) and Scott Salyer (“Salyer”).

The Farm Entities assert sweeping global technical objections to the form of numerous time entries without any analysis or explanation justifying the objections. SHSL has reviewed and revised entries that arguably did not conform to the United Trustee’s Guidelines.

The Farming Entities also make wholesale objections to fees incurred in opposing efforts to remove the Trustee and SHSL, seeking authority to review the documents in the Trustee’s possession, and in seeking disqualification of the Kasowitz firm. They state the conclusion, without any analysis, that “[n]one of the services surrounding these issues, as described in the bills, benefit the estate.” Objection filed October 30, 2009, p. 1 [Docket No. 983]. However, these issues are directly related to the Trustee’s efforts in identifying and recovering assets of the estate, including assets currently held by the Farming Entities. The Farming Entities’ motivation for filing their objections is not to benefit the estate, but their self serving reaction to what they describe as “retaliatory tactics taken by the Trustee and the Schnader firm against counsel for the Farm Entities...”. Id. In short, the Farming Entities argue that the SHSL should not be paid compensated for efforts to bring the Farming Entities’ assets into the estate.

The objections lacks merit and should be overruled because the SHSL’s fees are reasonable, taking into consideration the nature, extent of value of services rendered as contemplated by the Code and the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5<sup>th</sup> Cir. 1974)

## II. ARGUMENT

In pertinent part, section 330(a) of Title 11 of the United States Code ("Bankruptcy Code") provides that, after notice and a hearing, the court may award to a trustee or professional person employed under section 327 reasonable compensation for actual, necessary services rendered by the trustee or attorney and reimbursement of actual, necessary expenses. In determining the reasonableness of fees, some courts will apply twelve factors enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5<sup>th</sup> Cir. 1974), the majority of which are also codified in section 330(a)(3).<sup>1</sup> See *Burgess v. Klenske (In re Manoa Fin. Co., Inc.)*, 853 F.2d 687, 690 (9<sup>th</sup> Cir. 1988) (factors applied in fee shifting cases are relevant to determine reasonable fees under section 330); *In re Pac. Express, Inc.*, 56 B.R. 859, 862-63 (Bankr. E.D. Cal. 1985) (Dahl, J.) (applying 12-factor *Johnson* analysis). The *Johnson* court considered the following factors to be relevant:

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<sup>1</sup> Section 330(a)(3) provides:

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or take addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

1 (1) the time and labor required; (2) the novelty and difficulty of the questions  
2 presented by the case; (3) the skill requisite to perform the legal service properly;  
3 (4) the preclusion of other employment by the attorney due to acceptance of a  
4 case; (5) the customary fee for similar work in the community; (6) whether the fee  
5 is fixed or contingent; (7) time pressures imposed by the client or the  
6 circumstances; (8) the amount involved and results obtained as a result of the  
7 attorneys' services; (9) the experience, reputation and ability of the attorneys; (10)  
8 the desirability of the case; (11) the nature and length of the professional  
9 relationship with the client; and (12) awards in similar cases.

10 *Johnson*, 488 F. 2d at 717-19.

11 Through its Fee Application, SHSL seeks interim allowance of \$1,420,467.00 in fees  
12 ("Fees") and reimbursement of \$81,433.81 in expenses ("Expenses") incurred rendering services  
13 to the Trustee during the period May 14, 2009 through September 30, 2009 ("Application  
14 Period"). Of the Fees incurred, SHSL has received payments totaling \$708,130.50.<sup>2</sup> This amount  
15 represents 70% of the Fees to which no objection has been made for May through September. The  
16 Farming Entities and Salyer objected to Fees incurred from May through September totaling  
17 \$408,851.50 and renewed their objections upon SHSL's filing of this Fee Application. Therefore,  
18 SHSL has not received any payment on the amounts subject to the Farming Entities objections.  
19 SHSL seeks herein an order overruling those objections.

20 The Farming Entities and Salyer have objected to SHSL's and the Trustee's Fees on the  
21 following general grounds: (a) insufficient description on redacted time entries; (b) failure to show  
22 separate entries for each service; (c) excessive time for a task; (d) duplicative services, and (3)  
23 services were not necessary to the administration of, or beneficial towards, the estate. Each of the  
24 grounds lacks merit because the Fees are reasonable, taking into consideration the nature, extent of  
25 value of services rendered as contemplated by the Code and the *Johnson* factors.

26 1. Insufficient description on redacted time entries: The Farming Entities and  
27

28 <sup>2</sup> At the time SHSL filed its Application it had submitted its invoice for September but had not yet  
received payment. On October 30, 2009, the Farming Entities objected to SHSL's September  
invoice in the amount of \$44,531.50. Thereafter, SHSL received payment pursuant to the  
Knudsen Order of \$ 190,278.90 on account of fees and \$17,926.02 on account of expenses.

1 Salyer object to the redactions on the basis that they are “overly broad and conceal the true nature  
2 of the work performed.” Objection at 1:17-18. As mentioned in the Fee Application, this Court’s  
3 Knudsen Order specifically authorizes SHSL to redact privileged items. *See* Knudsen Order, ¶  
4 2(a). SHSL redacted entries related to attorney-client privileged material and attorney work-  
5 product that addressed various strategic issues which have not been subject to public filings or  
6 proceedings. As the redactions were authorized by the Knudsen Order, they have been made for  
7 the benefit of the estates to safeguard the Trustee’s strategies for maximizing the estates’ recovery  
8 for the benefit of the creditors. Thus, the redactions are necessary and reasonable for the Trustee  
9 to fulfill his duties most effectively. *See* 11 U.S.C. § 330(a)(3)(C). Furthermore, SHSL and the  
10 Trustee have fully disclosed their respective activities in providing un-redacted versions of the  
11 invoices to the Court, the US Trustee, and the Official Committee of Unsecured Creditors.  
12 Accordingly, the Farming Entities and Salyer’s objection is meritless because the pertinent parties  
13 that need to know the nature and extent of the work performed are privy to that information.

14           2.     Failure to show a separate time entry for each service: The United States  
15 Trustee Fee Guidelines for Reviewing Applications for Compensation and Reimbursement of  
16 Expenses Filed Under 11 U.S.C. § 330 (“UST Guidelines”) provides that, “Services should be  
17 noted in detail and not combined or ‘lumped’ together, with each service showing a separate time  
18 entry; however, tasks performed in a project which total a *de minimis* amount of time can be  
19 combined or lumped together if they do not exceed .5 hours on a daily aggregate.” SHSL revised  
20 its entries where appropriate, although the Farming Entities and Salyer’s asserted indiscriminate  
21 blanket objections to time entries of less than .5 hours. As long as the services performed are a  
22 part of a related task and total a *de minimis* amount, the UST Guidelines allow the amount of time  
23 to be combined or lumped if it does not exceed .5 hours. Further, the time entries provide a  
24 sufficient narrative to inform the reader of the nature and extent of services rendered.

25           3.     Excessive Time for Tasks Listed: The Farming Entities object to a 1.2 hour  
26 entry involving discovery coordination during the period leading up to the impending Waste  
27 Water Litigation trial. *See* Docket Numbers 803, page 50, lines 5-10; and page 51, lines 20-23.

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1 Under considerable time pressures, SHSL had to: (1) coordinate the production four witnesses,  
2 taking into account their respective circumstances, availability and scheduling and (2) gather and  
3 produce 18 boxes of documents during this time frame. The time was not excessive in carrying  
4 out these tasks and were reasonable given the time pressures imposed by the circumstances. *See*  
5 *Pac. Express, Inc.* 56 B.R. at 862. Moreover, in compliance with the factors enumerated in  
6 section 330(a)(3)(D) of the Bankruptcy Code, the services were performed within a reasonable  
7 amount of time commensurate with the complexity, importance, and nature of this bankruptcy  
8 case. The Farming Entities state there are additional instances of this objection but fail to specify  
9 the offending entries.

10 4. Duplicative service: Section 330(a)(4)(A) provides that compensation is  
11 not allowed for *unreasonable* duplication of services. The presence of both Steve Dye and Kevin  
12 Coleman at the deposition of Shondale Seymour on June 12, 2009 in connection with the Waste  
13 Water Discharge Litigation was far from unreasonable. As one of the lead attorneys in the  
14 handling of the debtors' estates, Mr. Coleman's presence was required for his background  
15 knowledge of the case as a whole. Mr. Dye also appeared because he was to be lead trial counsel  
16 and was needed to preserve and manage the deposition from a trial perspective. Furthermore,  
17 although Mr. Dye handled most of the questioning that day, Mr. Coleman finished the rest of the  
18 deposition once Mr. Dye had to leave early for a prior commitment. Thus, Mr. Dye's presence for  
19 part of the deposition was justified and reasonable. Again, the Farming Entities state there are  
20 additional instances of duplicative services but fail to point to any particular instance.

21 5. Services not necessary to the administration of, or beneficial to the estate:  
22 In essence, the Farming Entities object to any fees associated with defending the Farm Entities'  
23 motions to remove the Trustee and to disqualify SHSL, prosecuting the Trustee's counter-motion  
24 to review documents in the Trustee's possession and the Trustee's motion to disqualify the  
25 Kasowitz firm. Each of these issues was litigated in the context of the Trustee's efforts to  
26 indentify and recover assets of the estate, either through substantive consolidation, avoidance  
27 actions, or otherwise. Unfortunately, these matters had to be addressed in order for the Trustee to  
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1 effectively administer the estate. Moreover, the fact that the Court ruled in the Trustee's favor on  
2 all these issues underscores that the services were necessary to the administration of and beneficial  
3 to the estate. The Trustee's ability to identify and recover additional assets depends greatly upon  
4 his ability to review the documents. The level of resistance by the Farming Entities on this issue is  
5 telling as to the importance of these efforts. In addition, Kasowitz' disqualification from  
6 representing adverse parties eliminates any unfair advantage that those parties may have had in  
7 defending claims brought by the estate. The fact that these motions are on appeal, as asserted in  
8 the Farm Entities and Salyer's Objection, does not diminish the reasonable and necessary services  
9 that SHSL performed for the benefit of the estates. Thus, the Farm Entities and Salyer do not  
10 have any basis to object to the Fees associated with these motions.

### 11 III. CONCLUSION

12 WHEREFORE, Schnader Harrison Segal & Lewis LLP requests that the Court enter an  
13 order:

14 (1) approving an interim award of Fees for services to the Trustee for the period May 14,  
15 2009 through September 30, 2009 in the total amount of \$1,420,467.00 and reimbursement of  
16 Expenses incurred during that period in the amount of \$81,433.81;

17 (2) overruling the Objections of the Farming Entities and Salyer; and

18 (3) granting any other and further relief as the Court deems proper.

19 Dated: November 25, 2009

SCHNADER HARRISON SEGAL & LEWIS LLP

21 By: /s/ Gregory C. Nuti

22 Gregory C. Nuti

23 Attorneys for Bradley D. Sharp, Chapter 11 Trustee